BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR.

W.P.NO. 2661 /2003

PETITIONER

Satesh Kumar Agrawal, son of Shri Devraj Agrawal, aged about 35 years, occupation – Transport Operator, Resident of Main Road Surajpur, ~~Distt.~~ Surajpur, Distt. Surguja (CG)

VERSUS

RESPONDENTS through :

1. State of Chhattisgarh, Secretary, Department of Food and Civil Supplies, D.K.S. Bhawan, Raipur (Chhattisgarh).

2. President, Chhattisgarh State Civil Supplies Corporation Limited, Raipur (Chhattisgarh)

3. Managing Director, Chhattisgarh State Civil Supplies Corporation Ltd, Raipur.

4. District Manager, Chhattisgarh State Civil Supplies Corporation Limited, Ambikapur Distt. Surguja (Chhattisgarh)

5. district Management, Chhattisgarh Civil Supply Corporation Limited, Ambikapur, Distt. Surguja (CG)

P. R. No. 9561/03 Presented by Shri S. Agrawal dated 26.06.03

RECEIVED COPY. 28/8/03 CLERK TO A.G. BILASPUR

(2) (4)

6. District collector, Surguja Ambikapur (Chhattisgarh)

PETITION UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT, ORDER OR/AND DIRECTION IN THE NATURE OF MANDAMUS, CERTIORARI OR OF ANY OTHER APPROPRIATE NATURE.

(92)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2661 of 2003

Satish Kumar Agrawal

Versus

State of Chhattisgarh and others

POST FOR ORDER ON *4TH NOVEMBER, 2003*

Sd/-
L.C.BHADOO
Judge

03.11.2003

(93)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2661 of 2003

Satish Kumar Agrawal

Versus

State of Chhattisgarh and others

Present: -

Mrs. Hamida Siddque, Advocate: For the petitioner

Mr. Ranbir Singh Marhas, Govt. Advocate: For the State/respondents 1 & 6

Mr. Prashant Mishra, Advocate: For respondents 2 to 5

Before: Hon'ble Shri Justice L.C. Bhadoo

ORDER

(Passed on 6th November, 2003)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the process of selection of a contractor for transportation of food grains of Chhattisgarh State Civil Supplies Corporation Limited i.e. notice inviting tenders dated 14.08.2003 issued by respondent No.4.

2. The petitioner's petition is that he is a permanent resident of Surajpur, District: Surguja, he is engaged in the business of transport and at present he is transporting goods of the respondent Corporation i.e. Chhattisgarh State Civil Supplies Corporation Limited. It has further been mentioned that one day when the petitioner went to the Office of respondent No.4 on some official work, he was surprised to know that the tender forms were being filled up by certain contractors for transportation of food grains to the areas of Odgi, Premnagar, Surajpur, Bhaiyathan, Ramanujnagar, Lakhanpur and Udaipur. On this, the petitioner enquired from respondents 4 & 5, but they refused to

94

disclose the details of the tender notice, but some how, he came to know through other contractor that 3-4 days earlier, the tender notice was issued and the same was published in daily newspaper 'Ambikavani'. Copy of the same is Annexure P-1. After coming to know about this, the petitioner immediately moved an application before respondent No.4 mentioning therein that he is prepared to enter into the said contract even at 10% less rate than the lowest rate quoted by any of the tenderers. Copy of the application is Annexure P-2. Respondents 4 & 5 have arbitrarily and in order to give benefit to a particular contractor, adopted the above procedure. The petitioner is still a contractor of the respondent Corporation and he has still got sufficient contracts with the respondent Corporation. The billing sheet of the petitioner is Annexure P-3.

3. The petitioner being a transport contractor was regularly visiting the respondent's Office, but the notice inviting tender was never affixed on the notice board of the District Office or Block Office, nor it was published in any popular and widely circulated newspaper, but it was published only in Ambikavani on 19.08.2003, which is being circulated in a very small area. This all has been done in order to see that the petitioner should not participate in the tender. The action of the respondents is violative of Articles 14 & 19 of the Constitution of India. The said action of the respondents is arbitrary as no opportunity was given to the petitioner to participate in the tender by publishing in widely circulated newspapers, rather intentionally it was published in a small news paper 'Ambikavani' on 19th of August, 2003 in which the last date for submission and opening of the tenders was fixed as 25th of August, 2003. Therefore, a writ in the nature of mandamus/certiorari directing the respondents to call fresh tenders by giving reasonable time and also by way of publishing in popular newspaper be issued and the notice inviting tenders issued by respondent No.4 be quashed.

(95)

4. Return has been filed on behalf of respondents 2 to 5 in which they have specifically denied the allegations levelled by the petitioner. It has been mentioned that the notice inviting tenders was issued on 14th August, 2003, in pursuance of the directions dated 05.08.2003 issued by the State Civil Supplies Corporation (Annexure R-1). The allegations of the petitioner are baseless. It is not correct that 'Ambikavani' is not a widely circulated newspaper. Ambikavani is a local newspaper, which has a circulation of 20,000 copies and is widely circulated in the entire division of Ambikapur and even the notice was affixed on the notice board of the District Office of the Corporation. As per para 5.9 of the petition, the petitioner is a regular visitor of the respondent's (Corporation) office, then he must have come to know about the notice inviting tenders as the same was affixed in the notice board of the office.

5. It has been mentioned in the rejoinder that as per the rules of the Chhattisgarh Storage Purchase Rules 2002, the notice inviting tenders should have been published at least in two local newspapers, which has not been done in the present case.

6. It has been mentioned in the additional return submitted by respondents 2 to 5 that after issuance of the notice inviting tenders, the respondents received in all 18 tenders. Therefore, the petition be dismissed.

7. I have heard Mrs. Hamida Siddique, counsel for the petitioner; Mr. Ranbir Singh Marhas, Govt. Advocate for respondents 1 & 6; and Mr. Prashant Mishra, counsel appearing on behalf of respondents 2 to 5.

8. Mrs. Hamida Siddique, learned counsel appearing for the petitioner submitted that the petitioner is presently a contractor of the respondent Corporation under a contract and is transporting the goods of the respondent and he is a regular visitor to the Office of the respondent. The notice inviting tenders was not affixed on the notice

96

board of the respondent's Office and the Ambikavani newspaper is not a widely circulated newspaper. Therefore, wide publicity was not given to the notice inviting tenders. Moreover, it is said that the notice inviting tenders was for short term whereas, it has not been mentioned in the notice inviting tenders dated 14.08.2003 itself (Annexure P-1). Therefore, the procedure adopted by the respondents in issuance of notice inviting tenders for transportation of food grains of the respondent Corporation to various areas is illegal, arbitrary and the same should be quashed.

9. On the other hand, Mr. Prashant Mishra, learned counsel appearing on behalf of respondents 2 to 5, submitted that the whole contention of the learned counsel for the petitioner is baseless. There is nothing on record, which shows that the notice was not affixed on the notice board of the respondent's office. Moreover, Ambikavani newspaper is a widely circulated newspaper in the whole division of Ambikapur and around about 20,000 copies are being published which are sent to various areas of Ambikapur division. In response to the notice inviting tenders, in all 18 tenderers have submitted their tenders which itself shows that wide publicity was given to the notice inviting tenders through 'Ambikavani' and also by affixing the notice on the notice board and 18 tenderers who have submitted their tenders are from various places like Ambikapur, Wadrafnagar, Kusumi, Ramanujganj, Sitapur and Bishrampur. Therefore, the petition of the petitioner be dismissed.

10. Mr. Ranbir Singh Marhas, learned Govt. Advocate appearing on behalf of the State/respondents 1 and 6 also adopted the argument of Mr. Prashant Mishra.

11. The main grievance of the petitioner is that the notice inviting tenders was not given wide publicity and was not affixed on the notice board of the respondent's office. If we look into the paper (Annexure R-1) filed by respondents 2 to 5 along with the return, a perusal of it reveals that

the Chhattisgarh State Civil Supplies Corporation Limited, Raipur, vide its letter dated 05.08.2003 intimated respondent No.4 that the permission to issue short term tender notice for transportation of food grains is approved looking to the urgency involved in the matter and short term tender notice may be issued on the local basis. In pursuance of this direction of the Head Office, respondent No.4 issued a notice inviting tenders in question and it is not disputed that the same was published in the local newspaper namely, 'Ambikavani'. In pursuance of that notice inviting tenders, in all 18 tenderers have submitted their tender forms and they all are not only from Ambikapur, but from other five places also. From this fact it is evident that the notice inviting tenders was widely circulated. Moreover, respondents 2 to 5 have submitted a letter of approval dated 16.05.2002 issued by the Registrar of Newspapers, Govt. of India, along with the return in which it has been mentioned that 'Ambikavani' newspaper has published 17,503 copies daily during the year 2000 and the same was found on enquiry conducted by the Officer under Section 19-F of the Press and Registration Act, 1867. In the last line, it has been mentioned that the regularity in publishing the newspaper is 96.99%. Moreover, it has been mentioned in the return that the notice inviting tenders was also affixed in the notice board of the respondent's office.

12. A perusal of Annexure P-2, the copy of the application which was given by the petitioner to respondent No.4 on 25th August, 2003, offering that he is prepared to transport the goods at 10% less rate than the lowest rate quoted by any tenderer, shows that in this application it has no where been mentioned that the notice inviting tenders was not affixed on the notice board of the respondent. However, it has been mentioned that Ambikavani newspaper is not a widely circulated newspaper. It is evident from the petitioner's petition that he is a transport contractor of the respondent Corporation and presently he is transporting the goods of respondent No.4 and he is regularly visiting

98

the office of the respondent. If a contractor regularly visits the office, then it can hardly be said that it was not known to him about the notice inviting tenders because, when the person who is already engaged in the business of transport of the respondent and he visits the respondent's office regularly, then in normal course the officials of the office are supposed to disclose the fact of the notice inviting tenders. In the local newspaper, the notice inviting tenders was published as per the guidelines given by the Head Office vide Annexure R-1. As far as publication of notice in two newspapers is concerned, it has been said that it is the requirement when any tender notice is issued for purchase of stores.

13. In view of the above, I am of the opinion that the petitioner has not been able to establish that wide publicity was not given to the notice inviting tenders and therefore, the petitioner and some other persons could not come to know about the notice inviting tenders and they were not able to submit their tender items. When 18 persons from various places like, Ambikapur, Wadrafnagar, Kusumi, Ramanujganj, Sitapur and Bishrampur, were able to know about the notice inviting tenders and in response to the notice inviting tenders they submitted their tender forms, it cannot be held that the notice inviting tenders was not widely circulated. Therefore, the petition of the petitioner is liable to be dismissed and it is dismissed.

Sd/-
L.C.BHADOO
Judge

Soma